

1
2
3
4
5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT TACOMA

8 JOHN M.,

9 Plaintiff,

Case No. C18-5494 RBL

10 v.

ORDER AFFIRMING DENIAL OF
BENEFITS

11 COMMISSIONER OF SOCIAL SECURITY,

12 Defendant.

13 **I. INTRODUCTION**

14 This matter is before the Court on Plaintiff John M.'s Complaint (Dkt. 4) for review of
15 the Commissioner of Social Security's denial of his application for disability insurance and
16 supplemental security income benefits. This is the second time this matter has been before the
17 Court. *See* Administrative Record ("AR") (Dkt. 8) at 1059-62.

18 Plaintiff has severe impairments of bilateral hearing loss, degenerative disc disease,
19 obesity, diabetes mellitus, mood disorder/bipolar disorder II/major depressive disorder/antisocial
20 personality disorder, rule-out malingering, anxiety disorder not otherwise specified, alcohol
21 dependence, and cocaine and methamphetamine abuse. *Id.* at 943.

22 Plaintiff applied for disability benefits on April 8, 2011, alleging a disability onset date of
23

ORDER AFFIRMING DENIAL OF BENEFITS

1 September 20, 2011.¹ *See id.* at 126, 230-33. Plaintiff had previously applied for and been
2 denied benefits, a decision that Plaintiff did not appeal. *See id.* at 109-20.

3 Plaintiff's application was denied on initial review and on reconsideration. *Id.* at 126-37,
4 139-53. At Plaintiff's request, Administrative Law Judge ("ALJ") Michael Gilbert held a
5 hearing on Plaintiff's claims. *Id.* at 43-105. The Appeals Council denied review. *Id.* at 1-4.
6 Plaintiff then sought review before this Court. *See id.* at 1057-58.

7 On October 27, 2015, Magistrate Judge Richard Creatura issued an order reversing and
8 remanding the ALJ's decision for further administrative proceedings. *Id.* at 1063-71. Magistrate
9 Judge Creatura held that the ALJ erred in rejecting the opinions of Daniel Neims, Psy.D. *Id.*

10 Prior to Magistrate Judge Creatura's decision, Plaintiff filed a new application for
11 benefits. *See id.* at 1419-31. On remand, the Appeals Council ordered that application to be
12 consolidated with the 2011 application. *Id.* at 1077-80.

13 On remand, ALJ Gilbert held a second hearing. *Id.* at 972-1022. He then issued a
14 partially favorable decision. *Id.* at 940-53. ALJ Gilbert found that Plaintiff was not disabled
15 from September 20, 2011, the alleged onset date, to January 18, 2015, but became disabled on
16 January 19, 2015. *Id.* Plaintiff filed written exceptions to the ALJ's decision, but the Appeals
17 Council declined to assume jurisdiction. *Id.* at 1398-1403, 930-32.

18 Plaintiff argues that the ALJ erred in (a) rejecting Plaintiff's testimony, (b) evaluating the
19 medical evidence, (c) evaluating the lay witness testimony, and (d) assessing Plaintiff's residual
20 functional capacity ("RFC") and basing his findings at steps four and five of the disability
21 evaluation process on that RFC. *See Pl. Op. Br. (Dkt. 14)* at 2. Plaintiff argues that the Court
22

23 ¹ Plaintiff originally alleged an onset date of March 12, 2011, but amended the onset date to
September 20, 2011. *See id.* at 975.

1 should remand this matter for an award of benefits. *Id.*

2 II. DISCUSSION

3 Pursuant to 42 U.S.C. § 405(g), the Court may set aside the Commissioner's denial of
4 social security benefits if the ALJ's findings are based on legal error or not supported by
5 substantial evidence in the record as a whole. *Bayliss v. Barnhart*, 427 F.3d 1211, 1214 n.1 (9th
6 Cir. 2005). The ALJ is responsible for determining credibility, resolving conflicts in medical
7 testimony, and resolving any other ambiguities that might exist. *Andrews v. Shalala*, 53 F.3d
8 1035, 1039 (9th Cir. 1995). While the Court is required to examine the record as a whole, it may
9 neither reweigh the evidence nor substitute its judgment for that of the ALJ. *See Thomas v.*
10 *Barnhart*, 278 F.3d 947, 954 (9th Cir. 2002).

11 A. The ALJ Did Not Harmfully Err in Rejecting Plaintiff's Testimony

12 Plaintiff contends that the ALJ erred in rejecting his subjective symptom testimony. Pl.
13 Op. Br. at 12-16. Plaintiff testified that he had severe back pain that radiated down his legs,
14 limiting his ability to sit, stand, or walk. AR at 296, 300-01, 982, 999-1000, 1494, 1499, 1524,
15 1529. Plaintiff testified that he was limited in the amount he could lift. *See id.* Plaintiff testified
16 that his biggest obstacle to employment was his mental condition, which caused him to have trust
17 and anger issues. *See id.* at 64, 75-76, 296, 301.

18 The Ninth Circuit has "established a two-step analysis for determining the extent to
19 which a claimant's symptom testimony must be credited." *Trevizo v. Berryhill*, 871 F.3d 664,
20 678 (9th Cir. 2017). The ALJ must first determine whether the claimant has presented objective
21 medical evidence of an impairment that "could reasonably be expected to produce the pain or
22 other symptoms alleged." *Id.* (quoting *Garrison v. Colvin*, 759 F.3d 995, 1014-15 (9th Cir.
23 2014)). At this stage, the claimant need only show that the impairment could reasonably have

1 caused some degree of the symptoms; he does not have to show that the impairment could
2 reasonably be expected to cause the severity of the symptoms alleged. *Id.* The ALJ found that
3 Plaintiff met this step because his medically determinable impairments could reasonably be
4 expected to cause the symptoms he alleged. AR at 945.

5 If the claimant satisfies the first step, and there is no evidence of malingering, the ALJ
6 may only reject the claimant's testimony "by offering specific, clear and convincing reasons for
7 doing so. This is not an easy requirement to meet." *Trevizo*, 871 F.3d at 678 (quoting
8 *Garrison*, 759 F.3d at 1014-15). In evaluating the ALJ's determination at this step, the Court
9 may not substitute its judgment for that of the ALJ. *Fair v. Bowen*, 885 F.2d 597, 604 (9th Cir.
10 1989). As long as the ALJ's decision is supported by substantial evidence, it should stand, even
11 if some of the ALJ's reasons for discrediting a claimant's testimony fail. *See Tonapetyan v.*
12 *Halter*, 242 F.3d 1144, 1148 (9th Cir. 2001).

13 The ALJ found that Plaintiff's testimony concerning the intensity, persistence, and
14 limiting effects of his symptoms was "not fully supported prior to January 19, 2015." AR at 945.
15 The ALJ reasoned that Plaintiff's medical records were inconsistent with the severity of physical
16 and mental limitations alleged, and that Plaintiff's daily activities contradicted the severity of
17 symptoms alleged. *Id.* at 945-48.

18 Plaintiff has failed to show harmful error with respect to the ALJ's first reason—
19 inconsistency with the overall medical record. *See Ludwig v. Astrue*, 681 F.3d 1047, 1054 (9th
20 Cir. 2012) (holding that the party challenging an administrative decision bears the burden of
21 proving harmful error) (citing *Shinseki v. Sanders*, 556 U.S. 396, 407-09 (2009)). While an ALJ
22 may not reject subjective pain testimony "on the sole ground that it is not fully corroborated by
23 objective medical evidence," *Rollins v. Massanari*, 261 F.3d 853, 857 (9th Cir. 2001), the ALJ

1 may reject such testimony when it is contradicted by the objective medical evidence, *see*
2 *Carmickle v. Comm’r, Soc. Sec. Admin.*, 533 F.3d 1155, 1161 (9th Cir. 2008). Plaintiff has done
3 nothing more than present an alternative interpretation of the evidence. But “[w]here the
4 evidence is susceptible to more than one rational interpretation, one of which supports the ALJ’s
5 decision, the ALJ’s conclusion must be upheld.” *Thomas*, 278 F.3d at 954. The ALJ gave a
6 thorough discussion of the evidence, citing numerous records that revealed less severe
7 impairments than Plaintiff alleged. *See* AR at 945-47. The Court will not second-guess that
8 interpretation given Plaintiff’s failure to show that it was unreasonable.

9 Plaintiff has also failed to show harmful error with respect to the ALJ’s second reason for
10 discounting Plaintiff’s testimony—inconsistency with Plaintiff’s daily activities. An ALJ may
11 use a claimant’s activities to form the basis of an adverse credibility determination if they
12 “contradict [her] other testimony.” *See Orn v. Astrue*, 495 F.3d 495 F.3d 625, 639 (9th Cir.
13 2007). Here, the ALJ reasonably concluded that Plaintiff’s impairments were not as severe as he
14 alleged because he could perform activities that contradicted his allegations, such as preparing
15 his own meals, shopping in stores, doing laundry, attending support group meetings, and
16 attending church. *See* AR at 947-48. Contrary to Plaintiff’s argument, the ALJ did not cite to
17 these activities as evidence that Plaintiff could perform specific work activities, but rather to
18 show that Plaintiff’s testimony was not consistent with his actual activity level. *Id.* Plaintiff has
19 thus failed to show that the ALJ harmfully erred in discounting Plaintiff’s testimony.

20 **B. The ALJ Did Not Harmfully Err in Evaluating the Medical Evidence**

21 Plaintiff contends that the ALJ erred in evaluating the medical evidence. Pl. Op. Br. at 3-
22 12. Plaintiff challenges the ALJ’s evaluation of nearly all of the medical opinions in the record,
23 but addresses those opinions in cursory fashion. The Court has repeatedly admonished

1 Plaintiff's counsel not to submit general recitations of the evidence devoid of anything more than
2 conclusory legal arguments. *See, e.g., Rachel S. v. Berryhill*, No. C18-5377 RSL, 2019 WL
3 1013469, at *4 (W.D. Wash. Mar. 4, 2019). The Court will not address the ALJ's weighing of
4 medical opinions for which Plaintiff has not identified specific errors, including the opinions of
5 Lezlie Pickett, Ph.D., Robert Corliss, M.D., and Brian Brendel, M.D. *See Carmickle*, 533 F.3d at
6 1161 n.2 (noting that the court "'ordinarily will not consider matters on appeal that are not
7 specifically and distinctly argued in an appellant's opening brief'" (quoting *Paladin Assocs.,*
8 *Inc. v. Mont. Power Co.*, 328 F.3d 1145, 1164 (9th Cir. 2008))). The Court will separately
9 discuss the opinions for which Plaintiff has identified—albeit barely—an alleged error.

10 **1. The ALJ Did Not Harmfully Err in Discounting the Opinions of Dan Neims,**
11 **Psy.D.**

12 Dr. Neims evaluated Plaintiff on May 2, 2013. AR at 798-817. Dr. Neims conducted a
13 clinical interview and mental status exam, and performed several psychological tests. *Id.* Dr.
14 Neims opined that Plaintiff was markedly limited in his ability to make simple work-related
15 decisions, communicate and perform effectively in a work setting, complete a normal work day
16 and week without interruptions from his psychological symptoms, maintain appropriate behavior
17 in a work setting, and set realistic goals and plan independently. *Id.* at 800.

18 The ALJ gave Dr. Neims's opinions little weight. *Id.* at 948. The ALJ reasoned that Dr.
19 Neims's opinions were inconsistent with the overall medical evidence, and that Plaintiff's
20 symptoms appeared exaggerated during Dr. Neims's evaluation because Plaintiff was not on his
21 medication at that time. *Id.*

22 Plaintiff has again failed to show harmful error. *See Ludwig*, 681 F.3d at 1054 (citing
23 *Shinseki*, 556 U.S. at 407-09). An ALJ may reasonably reject a doctor's opinions when they are
inconsistent with or contradicted by the medical evidence. *See Batson v. Comm'r of Soc. Sec.*

1 *Admin.*, 359 F.3d 1190, 1195 (9th Cir. 2004). Plaintiff has presented an alternate interpretation
2 of the medical evidence by pointing to one other doctor's findings. Pl. Op. Br. at 4. But Plaintiff
3 has failed to demonstrate that the ALJ's interpretation of Dr. Neims's opinions and the overall
4 medical evidence was irrational. *See Thomas*, 278 F.3d at 954. Plaintiff has consequently failed
5 to show error.

6 Plaintiff misreads the second part of the ALJ's rationale for rejecting Dr. Neims's
7 opinions. It is true that an ALJ may not reject a doctor's opinions based on a claimant's inability
8 to afford necessary medication. *See Gamble v. Chater*, 68 F.3d 319, 321 (9th Cir. 1995). But
9 that is not what the ALJ did here. Instead, ALJ Gilbert noted, and Plaintiff himself
10 acknowledged, that Plaintiff's medications had been helping him function over the past five
11 years. AR at 802, 948. Because Plaintiff had not been able to afford his medication at the time
12 of Dr. Neims's examination, Plaintiff's condition appeared worse than it did throughout much of
13 the rest of the record. The record does not suggest that Plaintiff could never afford his
14 medications, however, and thus Plaintiff's worsened condition due to lack of medication was
15 transitory. The ALJ therefore did not harmfully err in discounting Dr. Neims's opinions because
16 they were inconsistent with the overall medical record.

17 **2. The ALJ Did Not Harmfully Err in Discounting the Opinions of Jason**
18 **Savoldi, D.O.**

19 Dr. Savoldi was one of Plaintiff's treating doctors. *See* AR at 342-53, 369-70, 402-15,
20 611-16, 702-26. In August 2011, Dr. Savoldi reported that Plaintiff had low back pain that
21 would require treatment that would take six months to a year before Plaintiff could effectively
22 return to employment. *Id.* at 370. Dr. Savoldi opined that Plaintiff was incapable of even low
23 stress jobs, could sit, stand or walk for less than two hours in a normal eight-hour work day,
would need to take unscheduled rest breaks, would miss more than four days of work per month,

1 had lifting limitations, and had postural limitations. *Id.* at 408-09. Dr. Savoldi opined that
2 Plaintiff was “[s]eriously limited, but not precluded” in his ability to maintain regular attendance
3 and be punctual within customary tolerances, work in coordination with others, make simple
4 work-related decisions, and complete a normal work day or week without interruptions from his
5 psychological symptoms. *Id.* at 412.

6 The ALJ rejected Dr. Savoldi’s opinions as “unpersuasive.” *Id.* at 949. The ALJ
7 reasoned that Dr. Savoldi’s opinions were inconsistent with his own treatment notes and the
8 other evidence in the record. *Id.* In particular, the ALJ noted that “just the following month after
9 Dr. Savoldi’s opinion, [Plaintiff] had an essentially unremarkable exam of the low back and there
10 was no indication of anxiety, depression, or agitation.” *Id.*

11 The ALJ’s first reason for rejecting Dr. Savoldi’s opinions fails because it is not
12 adequately explained. Stating that a doctor’s opinion is contrary to his clinical findings without
13 explanation fails “to specify why the ALJ felt the treating physician’s opinion was flawed.”
14 *McAllister v. Sullivan*, 888 F.2d 599, 602 (9th Cir. 1989). ALJ Gilbert did not specify how Dr.
15 Savoldi’s records were inconsistent with his opinions, and thus erred.

16 The ALJ’s second reason for rejecting Dr. Savoldi’s opinions survives scrutiny. ALJ
17 Gilbert thoroughly discussed the medical evidence—albeit elsewhere in the decision—and
18 identified how it was inconsistent with the limitations that align with Dr. Savoldi’s opinions. *See*
19 AR at 945-47. The ALJ did not err in rejecting Dr. Savoldi’s opinions based on inconsistencies
20 with the medical record. *See Batson*, 359 F.3d at 1195.

21 Although the ALJ included an erroneous reason in his rejection of Dr. Savoldi’s opinions,
22 Plaintiff has failed to show harmful error. *See Ludwig*, 681 F.3d at 1054 (citing *Shinseki*, 556
23 U.S. at 407-09). An error is harmless “where it is ‘inconsequential to the ultimate disability

1 determination.”” *Molina v. Astrue*, 674 F.3d 1104, 1115 (9th Cir. 2012) (quoting *Carmickle*, 533
2 F.3d at 1162). ALJ Gilbert’s second reason for rejecting Dr. Savoldi’s opinions remains valid
3 regardless of the Plaintiff’s erroneous first reason, so his inclusion of that erroneous reason was
4 inconsequential and therefore harmless.

5 **3. The ALJ Did Not Harmfully Err in Rejecting the Opinions of Renato**
6 **Fajardo, M.D.**

7 Dr. Fajardo examined Plaintiff on April 26, 2013. AR at 818-29. Dr. Fajardo opined that
8 Plaintiff was moderately limited in many of his basic work activities due to chronic low back
9 pain and degenerative disc disease with radiculopathy. *Id.* at 819. Dr. Fajardo opined that
10 Plaintiff was limited to sedentary work, defined as being “[a]ble to lift 10 pounds maximum and
11 frequently lift or carry lightweight articles,” and “[a]ble to walk or stand only for brief periods.”
12 *Id.* at 820.

13 ALJ Gilbert gave Dr. Fajardo’s opinions little weight. *Id.* at 949. The ALJ reasoned that
14 Dr. Fajardo’s opinions were inconsistent with his own exam. *Id.* The ALJ explained that “[f]or
15 example, there was mention of diminished sensation in the feet, but no mention of any gait
16 abnormality. He had intact deep tendon reflexes and motor.” *Id.*

17 The ALJ did not err in rejecting Dr. Fajardo’s opinions. An ALJ may discount a doctor’s
18 opinions when they are inconsistent with the doctor’s own clinical findings. *See Morgan v.*
19 *Comm’r of the Soc. Sec. Admin.*, 169 F.3d 595, 603 (9th Cir. 1999). “[I]t is the ALJ’s
20 responsibility to determine: (1) whether there are internal inconsistencies in a physician’s report;
21 (2) whether those inconsistencies are material; and (3) ‘whether certain factors are relevant to
22 discount’ the physician’s opinion.” *Downing v. Barnhart*, 167 F. App’x 652, 653 (9th Cir. 2006)
23 (quoting *Morgan*, 169 F.3d at 603). Dr. Fajardo’s exam had positive and negative findings,
which the ALJ interpreted to be inconsistent. *See* AR at 821, 823. Plaintiff has therefore failed

1 to show that the ALJ harmfully erred in rejecting Dr. Fajardo's exam.

2 **4. The ALJ Did Not Harmfully Err in Evaluating the Opinions of Enid Griffin,**
3 **Psy.D.**

4 Dr. Griffin examined Plaintiff on May 12, 2014. AR at 2012-16. Dr. Griffin opined that
5 Plaintiff should attend "intensive, consistent therapy." *Id.* at 2015. Dr. Griffin opined that
6 "[t]here is no indication of significant memory issues which would impede on [Plaintiff's] ability
7 to handle simple tasks," and "[h]is ability to reason and adapt is slightly limited at this time." *Id.*

8 The ALJ gave Dr. Griffin's opinions great weight. *Id.* at 950. Plaintiff argues that the
9 ALJ erred in doing so, but an ALJ is not required to provide reasons for accepting a medical
10 opinion. *See Turner v. Comm'r of Soc. Sec. Admin.*, 613 F.3d 1217, 1223 (9th Cir. 2010).
11 Furthermore, Plaintiff has done nothing more than ask for an alternate interpretation of Dr.
12 Griffin's opinion, and thus has not shown error. *See Thomas*, 278 F.3d at 954.

13 **5. The ALJ Did Not Harmfully Err in Weighing the Opinions of the Non-**
14 **Examining Doctors**

15 Plaintiff last argues with respect to the medical evidence that the ALJ erred in evaluating
16 the opinions of non-examining doctors Edward Beaty, Ph.D., Thomas Clifford, Ph.D., and
17 Robert Hoskins, M.D. Pl. Op. Br. at 11-12. The ALJ addressed the opinions of Dr. Beaty and
18 Dr. Clifford together, and the Court will do the same.

19 a. The ALJ Did Not Harmfully Err in Evaluating the Opinions of Dr. Beaty
20 and Dr. Clifford

21 Dr. Beaty analyzed Plaintiff's mental limitations as part of the Social Security
22 Administration's ("SSA") initial review of Plaintiff's second application for benefits. *See* AR at
23 1109-23. Dr. Beaty opined that Plaintiff was moderately limited in his ability to concentrate and
persist, and in his ability to interact socially. *Id.* at 1119-20. In particular, Dr. Beaty opined that
Plaintiff "could be expected to have occasional interruptions to his workday/workweek and

1 occasional issues regarding attendance. [He] remains capable of complex tasks with adequate
2 persistence and pace.” *Id.* at 1119. Dr. Beaty further opined that Plaintiff “could have difficulty
3 w[ith] greater than superficial public interactions. [He is] [a]ble to accept normal supervision
4 and interact appropriately with coworkers.” *Id.* at 1120.

5 Dr. Clifford analyzed Plaintiff’s mental limitations as part of the SSA’s reconsideration
6 of Plaintiff’s second application for benefits. *Id.* at 1125-41. Dr. Clifford’s opinions were
7 identical to Dr. Beaty’s opinions. *Id.* at 1137-38.

8 The ALJ, addressing Dr. Beaty and Dr. Clifford’s opinions together, found that the
9 cognitive limits to which these doctors opined were reasonable. *Id.* at 949. ALJ Gilbert
10 determined that the doctors’ statements that Plaintiff would have occasional interruptions in
11 productivity and attendance did not preclude all work. *Id.* at 949-50. ALJ Gilbert explained that
12 he accounted for the doctors’ limitations on social interaction by limiting Plaintiff to “no
13 interaction with the general public beyond [five percent] of the workday and no more than
14 occasional interaction with coworkers.”

15 ALJ Gilbert reasonably interpreted the opinions of Dr. Beaty and Dr. Clifford. An ALJ’s
16 RFC determination does not have to be identical to a doctor’s accepted opinion; it need only be
17 consistent with that opinion. *See Batson*, 359 F.3d at 1198. The fact that Plaintiff “could” have
18 “occasional interruptions” to his work day and regarding attendance does not indicate a specific
19 work limitation. Even workers with no limitations are off task and miss work from time to time.
20 *See AR* at 94 (testimony from vocational expert noting that typical workers are off task 10
21 percent of the time). The ALJ determined that Plaintiff’s occasional interruptions did not
22 preclude work. *AR* at 948-49. Plaintiff consequently has not shown that the ALJ erred in
23 addressing Dr. Beaty and Dr. Clifford’s opinions in the RFC.

1 b. The ALJ Did Not Harmfully Err in Evaluating Dr. Hoskins's Opinions

2 Dr. Hoskins reviewed Plaintiff's medical records and analyzed Plaintiff's physical
3 limitations as part of the SSA's reconsideration of Plaintiff's 2014 benefits application. *Id.* at
4 1125-41. Dr. Hoskins opined that Plaintiff had exertional, postural, manipulative, and
5 environmental limitations. *Id.* at 1134-36.

6 The ALJ gave Dr. Hoskins's opinions great weight. *Id.* at 948. Plaintiff argues that the
7 ALJ erred in concluding that Dr. Hoskins's opinions were consistent with the overall record. Pl.
8 Op. Br. at 11-12. But the ALJ was not required to give reasons for accepting a medical opinion.
9 *Turner*, 613 F.3d at 1223. And Plaintiff has not shown that the ALJ's reading of the evidence
10 was irrational. *See Thomas*, 278 F.3d at 954. The ALJ thus did not err in evaluating Dr.
11 Hoskins's opinions.

12 C. The ALJ Did Not Harmfully Err in Rejecting the Lay Witness Testimony

13 Plaintiff contends that the ALJ erred in rejecting the lay witness testimony. Pl. Op. Br. at
14 16-17. Plaintiff challenges the ALJ's treatment of three such witnesses: Danielle Bergman, an
15 occupational therapist; Saul Wallach, a vocational rehabilitation counselor; and Georgia M.,
16 Plaintiff's mother. *Id.*

17 In determining disability, “an ALJ must consider lay witness testimony concerning a
18 claimant's ability to work.” *Bruce v. Astrue*, 557 F.3d 1113, 1115 (9th Cir. 2009) (quoting *Stout*
19 *v. Comm'r, Soc. Sec. Admin.*, 454 F.3d 1050, 1053 (9th Cir. 2006)). The ALJ must “give reasons
20 germane to each witness” before he can reject such lay witness evidence. *Molina*, 674 F.3d at
21 1111 (internal citations and quotation marks omitted). “Further, the reasons ‘germane to each
22 witness’ must be specific.” *Bruce*, 557 F.3d at 1115 (quoting *Stout*, 454 F.3d at 1054).

23 //

1 **1. The ALJ Did Not Harmfully Err in Rejecting Ms. Bergman’s Opinions**

2 Ms. Bergman completed a summary of Plaintiff’s condition in November 2014. AR at
3 2227. Ms. Bergman opined that Plaintiff could perform light work, but not for a full eight-hour
4 work day. *Id.*

5 The ALJ gave Ms. Bergman’s opinion little weight because it was unsupported by the
6 overall medical evidence. *Id.* at 949. ALJ Gilbert noted that Plaintiff had “less than remarkable
7 objective deficits on exam with intact strength throughout, as well as, [sic] no gait
8 abnormalities.” *Id.*

9 Plaintiff has not demonstrated harmful error. *See Ludwig*, 681 F.3d at 1054 (citing
10 *Shinseki*, 556 U.S. at 407-09). An ALJ may reject lay witness testimony if it is inconsistent with
11 the overall medical evidence. *See Bayliss*, 427 F.3d at 1218. That is what the ALJ did here, and
12 Plaintiff has not shown that the ALJ’s conclusion was an irrational interpretation of the evidence.
13 *See Thomas*, 278 F.3d at 954. The ALJ thus did not harmfully err.

14 **2. The ALJ Did Not Harmfully Err in Rejecting Mr. Wallach’s Statement**

15 Mr. Wallach wrote a letter on behalf of the Washington Department of Social and Health
16 Services, Division of Vocational Rehabilitation (“DVR”), informing Plaintiff that he was not
17 eligible for vocational rehabilitation services. AR at 322. Mr. Wallach related that Plaintiff was
18 not eligible because “the severity of your disability is too significant for DVR services to help
19 you get or keep a job.” *Id.*

20 The ALJ gave Mr. Wallach’s statement no weight because no medical basis for the
21 determination of ineligibility for DVR services was provided, and the statement was a
22 “conclusory, vague comment for ineligibility.” *Id.* at 950.

23 Plaintiff has again failed to show harmful error. *See Ludwig*, 681 F.3d at 1054 (citing

1 *Shinseki*, 556 U.S. at 407-09). Mr. Wallach's statement was self-evidently a vague conclusion
2 about Plaintiff's eligibility for vocational rehabilitation services, which does not identify any
3 particular functional limitations. The ALJ did not err in rejecting this statement.

4 **3. The ALJ Did Not Harmfully Err in Rejecting Plaintiff's Mother's Statements**

5 Plaintiff's mother submitted two written statements. AR at 268-75, 1486-93. In April
6 2011, Plaintiff's mother explained that Plaintiff could not stand for very long, could not lift more
7 than 10 pounds, and could not stand to be around large groups because he was easily agitated.
8 *Id.* at 268. Plaintiff's mother gave a similar statement in April 2014, explaining that Plaintiff
9 could not stand or walk for very long, and could not lift more than 10 pounds. *Id.* at 1486.

10 The ALJ gave Plaintiff's mother's statements little weight. *Id.* at 950. ALJ Gilbert
11 reasoned that Plaintiff's mother's statements echoed Plaintiff's statements, which were rejected
12 for their inconsistency with the medical record. *Id.*

13 The ALJ did not err in rejecting Plaintiff's mother's statements. The ALJ reasonably
14 explained how the medical evidence contradicted Plaintiff's testimony and did not need to repeat
15 himself here. *See Molina*, 674 F.3d at 1122 (holding that any error in failing to specifically
16 discuss the lay witness testimony was harmless where that testimony mirrored the plaintiff's
17 testimony, and the ALJ gave clear and convincing reasons to reject).

18 In sum, the ALJ did not harmfully err in rejecting the lay witness testimony.

19 **D. The ALJ Did Not Harmfully Err in Assessing Plaintiff's RFC and Conducting Steps**
20 **Four and Five of the Disability Evaluation**

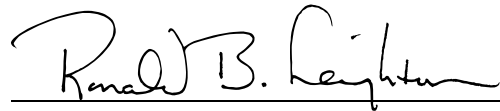
21 Plaintiff argues that the ALJ erred in assessing Plaintiff's RFC, and consequently erred at
22 steps four and five of the disability evaluation process. Pl. Op. Br. at 17-18. This argument is
23 derivative of Plaintiff's other arguments, as it is based on the contention that the ALJ failed to
properly evaluate Plaintiff's symptom testimony, the medical evidence, and the lay witness

1 testimony. *See id.* Because the Court has found that the ALJ did not err in his assessment of
2 Plaintiff's testimony, the medical evidence, and the lay witness testimony, Plaintiff's argument
3 fails. *See Stubbs-Danielson v. Astrue*, 539 F.3d 1169, 1174 (9th Cir. 2008).

4 III. CONCLUSION

5 For the foregoing reasons, the Commissioner's final decision is AFFIRMED and this
6 case is DISMISSED with prejudice.

7 DATED this 7th day of May, 2019.

8
9 

10 Ronald B. Leighton
11 United States District Judge
12
13
14
15
16
17
18
19
20
21
22
23